IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8251 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SADULLA MOHAMMED USMAN ABDULREHMAN

Versus

JITENDRA S DAVE

Appearance:

1. Special Civil Application No. 8251 of 2004

MR H.S.MULIA for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1-2

HL PATEL ADVOCATES for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/10/2004

ORAL JUDGEMENT

#. Rule. Mr.Vijay Patel waives service of rule on behalf of the respondent no.1 and Mr.Dipen Desai learned

A.G.P. waives service of rule for respondent nos. 2 and 3. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the notice issued by the Special Recovery Officer under Section 152 of the Bombay Land Revenue Code for recovery of the amount in question and the petitioner was supposed to give a reply to the said notice.

#. It is the contention of the petitioner that the petitioner has already paid the entire amount in the year 1991-92 and necessary certificate is also issued by the custodian at the relevant time.

#. Mr.Vijay Patel, learned advocate appearing on behalf of respondent no.1 has submitted that even considerng that amount also, certain further amount is due and payable by the petitioner for which the notice is issued. He submitted that in fact, the accounts were verified by the independent Chartered Accountant and after verification of the accounts, the Chartered Accountant also found that demand made by respondent no.1 is just and proper.

#. This court cannot decide the disputed question of fact. It is an admitted position that replies given by the petitioner dated 26.05.2003 and 10.09.2003 are still undecided. Under the circumstances, Special Recovery Officer is directed to look into the replies filed by the petitioner and ascertain the fact as to whether the petitioner is correct and any amount is due and payable by the petitioner or not. If ultimately, it is found that the facts stated by the petitioner are correct, no coercive action should be taken against the petitioners. The respondent no.1 is directed to look into the replies submitted by the petitioner within a period of two weeks from today after giving opportunity of hearing to the petitioner. It will be open to the respondent no.1 to point out other documentary evidence in support of his notice.

#. With these observations and directions, the present special civil application is disposed of. Notice discharged. Interim relief granted earlier stands vacated. Direct service is permitted.

(M.R.Shah,J)

(pathan)